

In the Matter of:

*Petition of Telcordia Technologies*

WC No. 09-109

March 4, 2014

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## I. INTRODUCTION AND SUMMARY.

In the last several weeks, the Commission has heard from individual providers and from trade associations representing hundreds of companies expressing concerns that the LNPA RFP process may be going off the rails, putting the interests of the telecommunications industry and consumers in jeopardy.<sup>1</sup> Neustar's Petition for Declaratory Ruling<sup>2</sup> explains the facts and circumstances underlying those concerns – information that of course was not available three years ago when the Commission was contemplating how to move forward with the RFP process. Neustar has asked the Commission to intervene now to avoid unnecessary delay by addressing legitimate issues going to the procedural fairness and substantive adequacy of the process.

No party has opposed the relief that Neustar sought – except Ericsson.<sup>3</sup> Ericsson's opposition undoubtedly reflects its hope that if it is shielded from further competition, its offer will be accepted as good enough. But there is a deep irony in Ericsson's insistence that the Commission should pull up the ladder now and curtail further competitive offers: Ericsson has

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<sup>1</sup> See e.g., Letter from Scott Kell, Executive Vice President, Operations and Engineering of Peerless Network, Inc., to Marlene Dortch, FCC Secretary, CC Dkt. No. 95-116, WC Dkt. No. 09-109 (filed Feb. 21, 2014) (Peerless Network Feb. 21, 2014 Ex Parte Letter); Letter from Charles D. Land, P.E., Executive Director of Texatel, to Julie Veach, Chief of the FCC's Wireline Competition Bureau, CC Dkt. No. 95-116; WC Docket Nos. 07-149, 09-109 (filed February 20, 2014); Letter from John Liskey, Executive Director of the Michigan Internet & Telecommunications Alliance, to Julie Veach, Chief of the FCC's Wireline Competition Bureau, CC Dkt. No. 95-116, WC Dkt. No. 09-109 (filed Feb. 17, 2014); Letter from Angie Kronenberg, Chief Advocate and General Counsel to COMPTel, to Marlene Dortch, FCC Secretary, CC Dkt. No. 95-116, WC Dkt. Nos. 07-149, 09-109 (filed Feb. 7, 2014) (COMPTel Feb. 7, 2014 Ex Parte Letter); Letter from John Nakahata, counsel to Telcordia Tech. Inc., to Julie Veach, Chief of the FCC's Wireline Competition Bureau, CC Dkt. No. 95-116, WC Dkt. Nos. 07-149, 09-109 (filed Feb. 6, 2014) (Telcordia Feb. 6, 2014 Ex Parte Letter).

<sup>2</sup> Petition of Neustar for Declaratory Ruling Concerning the Local Number Portability Administration Selection Process, CC No. 95-116, WC No. 09-109 (filed Feb. 12, 2014) ("Petition" or "Petn.").

<sup>3</sup> Telcordia is part of Ericsson and, unless the context dictates otherwise, will be referred to as "Ericsson" throughout.

never denied that it was the beneficiary of the extension that was granted for submission of proposals in April – relief that Ericsson indicates was ordered by the Commission without notice to affected parties (action that the Commission has not acknowledged). The rules were broken in an apparent effort to make one offeror’s path easier. The process should not protect that offeror from effective competition now, thereby denying key stakeholders the highest quality of service at the best price for whatever range of services is sought.

Ericsson accuses Neustar of being the beneficiary of a “sinecure,” but that is insult, not argument. Neustar has built a nearly flawless NPAC, one that the industry and public authorities have relied on for almost two decades. Ericsson has never done anything comparable in numbering administration. And if Ericsson genuinely believed that Neustar was a pampered monopolist, it would not insist on cutting off consideration of additional proposals and would have no fear of competing on a level playing field with Neustar.

Ericsson would have the Commission ignore the serious procedural and substantive defects in the LNPA RFP process because, it argues: (1) a petition for declaratory ruling is not the appropriate procedural vehicle for raising these concerns; (2) Neustar failed to raise its present concerns in response to the request for comment on the RFP documents and therefore waived them; and (3) the selection process is good enough and fair enough that the Commission can afford to look the other way.

Neustar disagrees. Contrary to Ericsson’s arguments, the current RFP process is not adequate to protect the public interest, and the claim that an offeror could “leverage its understanding of industry best practices”<sup>4</sup> to fill in the requirements that are lacking from the RFP – far from providing reassurance – underlines the need for greater clarity now, to allow

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<sup>4</sup> Opposition of Telcordia Technologies, Inc., d/b/a iconectiv, to Neustar’s Petition for a Declaratory Ruling, CC No. 95-116, WC No. 09-109 (filed Feb. 24, 2014) (“Opp.”) at 4.

reasoned decisionmaking and ensure that the selection process serves the industry and the public interest.

Prompt action by the Commission can address these defects without significant loss of time. The Commission has the power to intervene now to preserve all of the critical functionality of the current NPAC and to ensure that the NPAC is prepared to adapt to the future needs of the telecommunications industry, while obtaining the best value for the industry and consumers. If Neustar's position has changed, it is because circumstances have changed: the conduct of the RFP process has created inequity and has deprived the NANC and industry of the opportunity to ensure apples-to-apples comparison of proposals. That process threatens to harm consumers and competition.

## **II. THE COMMISSION HAS AUTHORITY TO ADDRESS THE ISSUES RAISED BY NEUSTAR'S PETITION.**

Neustar's petition presents an appropriate procedural vehicle for the Commission to address broad-based concerns about the RFP process to date. Section 1.2 of the Commission's rules broadly authorizes the Commission to act to "remov[e] uncertainty." Developments in the RFP process since the Commission's last action in May 2011 have created uncertainty that threatens to deprive decisionmakers of information vital to their selection and to impose burdensome and unnecessary costs on service providers and consumers.<sup>5</sup> For example, as Neustar detailed in its petition and noted in its letter of February 24, 2014:

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<sup>5</sup> Ericsson argues that previous actions by the Bureau constitute "incremental final decisions." Opp. at 9. There is no such thing – the phrase has never appeared in a reported case or FCC decision. The only relevant action by the Bureau was its May 2011 order, which was not a final agency action (since it only established a process to follow). There has been no other noticed action by the Bureau since that time. See 47 C.F.R. § 1.4(b) (defining public notice). In particular, the Bureau provided no notice that it approved the RFP documents; it provided no notice that it ordered or approved an extension to permit Ericsson to submit a late proposal. If it did those things, or otherwise manipulated the RFP process without notice to affected parties, it acted without following the procedures mandated by the APA and the Commission's own rules.

- Key substantive requirements, including those needed to address critical public safety and national security issues and to maintain services currently provided, have been left out of or glossed over in the RFP;
- The RFP does not sufficiently account for industry requirements to support important public interest and evolving technology goals such as the IP transition;
- Procedural ambiguities and irregularities in the selection process threaten to prejudice the parties and the public and to deprive stakeholders of the best possible offers from all offerors;
- The lack of clear rules has chilled the free and transparent flow of relevant information between offerors and selectors;
- The disposition of key vendor qualifications, including neutrality rules, has been cloaked in secrecy; and
- The RFP fails to define the approach, schedule, costs, or parameters of any vendor transition, including the impact on competition in the telecommunications industry.<sup>6</sup>

The Commission has statutory authority pursuant to Section 4(i) of the Communications Act, to take whatever actions are necessary to fulfill its responsibility to oversee numbering administration. *See* 47 U.S.C. § 154(i); *id.* § 252(e). The Commission has authority to “perform any and all acts, make such rules and regulations, and issue such orders, not inconsistent with this chapter, as may be necessary in the execution of its functions.” Addressing the deficiencies in the RFP process is unquestionably related to the “effective performance of [the Commission’s] statutorily mandated responsibilities.” *American Library Ass’n v. FCC*, 406 F.3d 689, 692 (D.C. Cir. 2005).

The best way for the Commission to secure the strongest offers – which would reflect a genuine apples-to-apples comparison of comparable NPAC solutions – is to reevaluate the RFP

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That would provide all the more reason for the Commission to halt the process and place it back on a legally sustainable path.

<sup>6</sup> The fact that vendors are required to bear “their own” transition costs, *see* Opp. at 23, says nothing about the impact of transition on NPAC users’ transition costs.

documents pursuant to a public process. That would not be inconsistent with any prior Commission action – to the contrary, the Commission retains authority to intervene in the process if necessary. In the absence of such intervention, the NANC and the Commission are likely to be left without a reasonable basis to evaluate the relative merits of incommensurable offers – and would unquestionably be deprived of available offers that improve on what they have before them. To ignore the weight of the arguments in Neustar’s petition and the concerns expressed by other constituents – to side with Ericsson – would be to sacrifice the public interest in receiving offers that are directly comparable and reflect all current services as well as new technological developments.

### **III. ERICSSON’S CLAIM THAT NEUSTAR “WAIVED” ITS ARGUMENTS IS A MERE EXCUSE TO AVOID THE MERITS OF NEUSTAR’S CONCERNS.**

Neustar has not “waived” any of the issues that it raises in its petition because the petition does not raise any claim that Neustar had an obligation to pursue at an earlier time. In fact, Neustar’s filing does not assert a legal claim against anyone. To the contrary, the petition seeks urgent Commission action to address developments in the RFP process that raise serious questions about whether the NANC and the FCC are in a position to fairly assess the adequacy of available proposals. There is no applicable waiver standard; the Commission is not required to overlook substantive and procedural flaws in the RFP documents based on a (nonexistent) technicality.

Ericsson highlights that Neustar originally expressed overall support for the RFP process and that is true. Since then, however, the process has unfolded in a manner that has deprived those responsible for the selection recommendations of relevant information and the opportunity to consider the best offers available. Moreover, the petition notes irregularities in the process, and key stakeholders have questioned whether the current process adequately addresses their

important needs and concerns. And there are new circumstances – for example, the Commission’s interest in accelerating the TDM-to-IP transition and increased concerns over cyber-security – that have intensified concerns about the adequacy of the RFP to address those issues. That situation should be corrected.

In any event, as the long-time steward of the NPAC, Neustar feels a special responsibility to ensure that the selection process fairly and comprehensively represents the interests of all constituents. There is still an opportunity, through open and transparent discussion, to identify elements that may be missing or inadequately specified in the RFP documents and to address those deficiencies. The Commission should issue a public notice to solicit comments on the issues raised in Neustar’s petition or direct the NANC to amend or restate the RFP, taking account of missing elements and inadequate specifications.

#### **IV. ERICSSON HAS FAILED TO ANSWER NEUSTAR’S CONCERNS ABOUT THE RFP.**

Neustar’s Petition pointed out that the RFP jeopardizes existing LNPA services and the functionality necessary to the maintenance of the carrier networks as a whole. The RFP documents as written invite a range of possible responses – widely varying and incommensurable responses – concerning certain key services provided in the existing LNP arrangement.<sup>7</sup> Ericsson answers concerns about these services with two-part responses: first, it treats the missing elements as things too obvious to have required inclusion. Second, it diverts attention from the missing service requirements with reference to unrelated platform specifications. Taken together, Ericsson’s responses serve to highlight, and not resolve, the RFP’s present inadequacies.

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<sup>7</sup> See Petn. at 12-14.



**A. Ericsson’s Speculation about What an LNPA Administrator “Would” Do Is No Answer to Omissions in the RFP Itself.**

Confronted with the RFP’s lack of critical specifics, Ericsson’s response amounts to saying, “Such detail is unnecessary – the requirements are so obvious the RFP need not have included them at all.” More than a dozen times, Ericsson answers the issue of missing requirements by reference to what a qualified offeror “would do” in the absence of the necessary specifications. As to missing design elements, Ericsson says that “[a] qualified respondent experienced in U.S. Number Portability *would have* leveraged its understanding of industry best practices . . . and included these [missing] elements in its response and design for the LNPA.”<sup>8</sup> As to ecosystem monitoring, Ericsson says that “a qualified vendor *would expect* [it] to be included as part of its obligations as an LNPA.”<sup>9</sup> And as to missing or inadequate technical requirements, Ericsson says that “[a]n informed, qualified vendor . . . *would be well aware of* the technical requirements and service-provider support services . . . .”<sup>10</sup>

But the issue is not one of trust or of what the next LNPA “would expect” or “would . . . likely” do.<sup>11</sup> The issue is that serious harm to consumers, public safety, and small carriers can occur if the requirements omitted from the RFP are performed poorly or not at all by an

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<sup>8</sup> Opp. at 4 (emphasis added).

<sup>9</sup> *Id.* at 5 (emphasis added).

<sup>10</sup> *Id.* at 23. *See also id.* at 5 (“a qualified vendor *would expect [ecosystem monitoring] to be included* as part of its obligations as an LNPA”); *id.* (“a qualified vendor would plan to build [mass port processing] tools”); *id.* (“qualified bidder *would understand . . . and expect* [timely porting] to be included”); *id.* at 19 (“qualified vendor *would be aware of* the needs and support services Neustar references”); *id.* at 25 (“[q]ualified bidders . . . *would likely team with* best in class, high performance data center companies”); *id.* (“[q]ualified bidders . . . *would proactively leverage* their knowledge and the best practices of their data center provider”); *id.* at 27 (“qualified vendors . . . *will be aware of, and planning for,* the added services that service providers expect”); *id.* at 28 (“qualified vendors *will be aware of* the LEAP platform *and will have factored that into* their bid response”) (emphasis added to all quotations).

<sup>11</sup> *Id.* at 5 & 25.

administrator that is aware of, but not obligated to perform, the needed services. Therefore, even if one were inclined to put aside the numerous procedural irregularities that have colored the selection process, the RFP's lack of specificity in requiring continued provision of certain key services that Ericsson effectively concedes are necessary demands a reconsideration of the RFP itself. Ericsson has no answer to this problem.

**B. Ericsson's Response Effectively Concedes that the RFP Fails to Require and Specify Certain Essential Services.**

As a second response, Ericsson asserts that the RFP and TRD actually do "include requirements that bidders describe how they will meet or provide the very functional and technical capabilities Neustar now claims have been insufficiently addressed."<sup>12</sup> But the references Ericsson makes to the RFP documents *do not actually require provision of the actual services* Neustar has flagged. Either intentionally or inadvertently, in each case Ericsson disguises the problem by collapsing differences between and among distinct services, different types of LNPA obligations and separate RFP provisions.

To take only one example, consider the RFP's lack of specificity in requiring ecosystem monitoring.<sup>13</sup> LNP computing depends on the integration and real-time performance of numerous discrete information technology infrastructures, not all of which are under common control. Because the LNP system is only as strong as its weakest link, ecosystem management is a critical means of ensuring reliability and functionality of the system as a whole. The RFP, Neustar pointed out, does not require the LNPA to perform the critical monitoring-correcting function necessary to keep the entire ecosystem functioning smoothly and with minimum disruption. This function, far more than maintenance of application heartbeats and adherence to

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<sup>12</sup> Opp. at 24 (emphasis added).

<sup>13</sup> See Petn. at 12-13.

NPAC service level requirements, involves regimented and proactive analysis and outreach among service providers and other LNP vendors. The service delivers two essential functions: first, it supports service providers' internal platform maintenance (indeed, given the complexities of the ecosystem, Neustar is often aware of carrier degradations before the carriers themselves), and second, it ensures that issues being experienced by one service provider do not affect the entire community of service providers within the relevant NPAC region. If this function were to degrade or disappear, significant costs and risks would be transferred from the LNPA to the industry in the form of increased transition failures and lower overall reliability.

Ericsson evades the obvious difficulty by citing a laundry list of RFP references which bear a linguistic similarity to what Neustar describes in the petition. Ericsson's primary mistake is conflating a documentation requirement with a requirement to provide a particular level of service. It can point only to an RFP *documentation* requirement – "Section 10.1 of the RFP requires bidders to provide . . . documents covering . . . NPAC help desk resolution, mechanized association troubleshooting and LTI access troubleshooting" – because, just as Neustar pointed out, the RFP contains no ecosystem monitoring *service* requirement.<sup>14</sup> What's more, even as to the documentation requirement, Ericsson's response is inapposite: the documentation required by the RFP relates to *monitoring of the NPAC center and network itself*,<sup>15</sup> and not the far broader ecosystem monitoring service identified as absent by Neustar.<sup>16</sup> The existing service involves

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<sup>14</sup> Neustar also expressed concern that the RFP lacked sufficiently specified disaster recovery and emergency preparedness requirements needed to address large-scale disaster impacts on carriers as a whole. *Id.* Ericsson responded by pointing to something different and far less comprehensive – redundancy-recovery plans for restoring the NPAC database itself. Opp. at 24.

<sup>15</sup> See Opp. at 26 (discussing Section 10.1 of the TRD).

<sup>16</sup> Similarly, Neustar pointed out the RFP's failure to adequately specify requirements for mass-porting in large-scale network migration. Petn. at 13-14. Ericsson answered with an allusion to documentation (not *service*) obligations and to a function representing only a fraction of the end-

monitoring of *other* systems, as, for example, in the monitoring of an individual service provider's connection to the NPAC system. In the event of a problem, that function involves redressing it and minimizing any negative effects on the larger ecosystem. All of this (and much more) is unaccounted for by Ericsson because the RFP does not adequately specify the functions and services currently performed by the LNPA.

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Ericsson's non-responses and diversions speak for themselves. But they should not be permitted to mask the deeper problem requiring attention from the Commission or the NANC. The fundamental problem is not with Ericsson's arguments in defense of the RFP (which could be no stronger than the RFP itself), but rather with the RFP's own failure to specify a level of continuity with existing services. Because the RFP does not identify (or adequately specify) all critical services, it does not clearly require the next LNPA administrator to provide them.

Left unredressed, the foreseeable effects of these omissions will be harmful to a range of interested persons, especially consumers and smaller carriers. At present, there can be no confidence that the offers will be evaluated on an apples-to-apples basis. And there can be no assurance that all of the existing functionality will be provided to industry and consumers under the next LNPA contract. Only prompt attention to the RFP process – with the necessary specifications adequately set forth and with clearly noticed rules applied with maximum transparency – can redress these deficiencies. Indeed, in the past the FCC, without hesitation, has taken the time needed throughout the selection process to ensure that the end result serves the public interest. This time should be no different.

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to-end services currently provided. Opp. at 27 (discussing last-step “NPAC User Methods and Procedures documents”).

## CONCLUSION

For the reasons set forth in Neustar's petition and above, the Commission should rectify the LNPA selection process.

Respectfully submitted,

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